

REMARKS

It is indicated that the claims of the present application are subject to a restriction requirement. The following inventions have been identified:

I. Claims 11-27, drawn to a pallet, classified in class 108, subclass 57.25.

II. Claims 1-10, drawn to method of producing a plastic structure, classified in class 156, subclass 245.

In the Office action, it was indicated that applicant has elected to prosecute Group I directed to claims 11-27. Claims 1-10 are withdrawn from further consideration by the examiner as being drawn to a non-elected invention.

Previously submitted claims 11-27 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-31 of U.S. Patent No. 6,718,888. Previously submitted claim 19 was rejected under 35 U.S.C. § 102(b) as being anticipated by Apps et al. (U.S. Patent No. 6,006,677). Previously submitted claims 20, 21, 23, 24-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Apps et al. Previously submitted claims 15-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Apps et al. in view of Schleicher (U.S. Patent No. 5,367,960).

With respect to the Examiner's rejections under the judicially created doctrine of obviousness-type double patenting, the named inventor is the same for both U.S. Patent No. 6,718,888 and for the instant application. Both U.S. Patent No. 6,718,888

and the instant application were assigned to the same entity, Nextreme, LLC, in an instrument recorded at Reel 011331 and Frame 0938 at the United States Patent and Trademark Office. In an abundance of caution, Applicant also executed an additional instrument expressly assigning its interest in the instant application to Nextreme, LLC. Accordingly, there is no question that U.S. Patent No. 6,718,888 and the instant application have at least one common inventor and have been assigned to a common entity. Consequently, applicant's assignee submits herewith a terminal disclaimer in compliance with 37 C.F.R. § 1.130(b) to overcome the rejection under the judicially created doctrine of obviousness-type double patenting.

With respect to the Examiner's rejections under 35 U.S.C. § 102(b), Apps et al. has been carefully reviewed and, as understood, discloses a pallet having an anti-slip layer. Apps et al. does not disclose a "fire resistant layer" as is indicated in the Office action. Since claim 19 recites a "fire resistant layer" in the body of the claim, Apps et al. does not teach or suggest all of the elements of claim 19. Consequently, Apps et al. cannot anticipate claim 19 of the instant application.

Applicant submits that the Examiner may have cited Apps et al. by mistake. Overholt (U.S. Patent No. 6,849,677) discloses a pallet that includes flame retardant material. The patent number for Apps et al. and Overholt both end with the same three digits, '677. Consequently, the Examiner may have intended to cite Overholt, instead of Apps et al.

Overholt is not prior art under 35 U.S.C. § 102(b) or 35 U.S.C. § 103(a) because its priority date is September 17, 2002. The instant application is a continuation of U.S. Patent No. 6,718,888, which has a priority date of March 12, 2001, and U.S. Provisional Application No. 60/196,127, which has a priority date of April 11, 2000. As a result, the priority date of the instant application precedes the priority date of Overholt.

In addition, intumescent polyolefins are preferred over fire resistant polyolefins because upon exposure to flames intumescent polyolefins decompose into ceramic-type char forming an insulating foam-like structure. Such decomposition is an improvement over conventional fire resistant polyolefins, such as that cited by Overholt and that rely upon hydrated alumina or magnesia to emit water to slow the burning process, because a fire resistant polyolefin finally ignites and drips flaming polyolefin liquid.

With respect to the Examiner's rejections of previously submitted claims 20, 21, and 23 under 35 U.S.C. § 103(a), claims 20, 21, and 23 are dependent claims that depend from claim 19. Consequently, claims 20, 21, and 23 include a "fire resistant layer" as elements of the claims. Since Apps et al. does not disclose a "fire resistant layer", Apps et al. cannot render claims 20, 21, and 23 obvious.

With respect to the Examiner's rejections of previously submitted claims 24-27 under 35 U.S.C. § 103(a), claim 24 and 26 are limited to fire resistant pallets that include intumescent

materials to provide the fire resistance. Claim 25 is a dependent claim that depends from claim 24. Claim 27 is a dependent claim that depends from claim 26. Since Apps et al. does not disclose a "fire resistant layer" or intumescent materials, Apps et al. cannot render claims 24-27 obvious.

With respect to the Examiner's rejections of previously submitted claims 15-18 under 35 U.S.C. § 103(a), claim 15 is directed to a material handling apparatus that includes an electronic device that has a wireless communicator, thermographic instrumentation, and circuitry. The thermographic instrumentation responds "to a variation in temperature indicative of fire by alerting circuitry." The circuitry triggers a "communicator to send an emergency signal to the remote station" that is indicative of a temperature rise corresponding to a fire. Claims 16-18 are dependent claims depending from claim 15.

Schleicher has been carefully reviewed and, as understood, discloses a "sheet metal pallet" that may include "electronic automation means such as sensors and transmitters" that may be placed in hollow bodies within the pallet members. Schleicher does not specify the type of sensors or transmitters that may be used. Schleicher does not teach or suggest thermographic instrumentation that measure temperatures or circuitry that triggers a fire alarm.

Schleicher does not teach or suggest a pallet that includes thermographic instrumentation that measure temperatures or circuitry that triggers a fire alarm for an obvious reason. The

Schleicher pallet is a metal pallet. Metal pallets are not flammable. Consequently, there would be no need to include thermographic instrumentation or fire alarm circuitry in the Schleicher pallet. Accordingly, neither Schleicher nor Apps et al. teach or suggest all of the elements of claims 15-18. Claims 15-18 are patentable over a combination of Schleicher and Apps et al.

Also, the teachings of Apps et al. and Schleicher cannot be combined to establish a *prima facie* case of obviousness because Apps et al. specifically teaches away from Schleicher. Column 1, lines 11-13 states "[m]etallic pallets typically are expensive and in the case of steel, heavy and subject to corrosion."

Previously, wooden pallets were preferred over plastic pallets because plastic materials are considerably more expensive than wood materials. Fire resistant materials were considered to be even more expensive than the commodity grade plastics that were preferred for making plastic pallets, including polyolefins comprising polyethylene and polypropylene. An advantage of the instant application is that, unlike injection molded pallets such as that disclosed by Overholt in which the entire resin matrix contains expensive fire resistant materials, only the surfaces that are exposed to fire contain a concentration of fire resistant material. This advantage is accomplished by using co-extruded sheet of plastic in which only an exposed surface contains a fire resistant or intumescent material.

In addition, an advantage that plastic materials has over wood and steel materials is that plastic materials are not barriers to RF signals. Wood absorbs liquids that interfere with RF signals and steel reflects RF signals. It would be impractical to locate an RF sending or receiving device inside the steel pallet of Schleicher. Consequently, there is no motivation to combine Apps et al. and Schleicher.

The amendment does not include new matter.

A terminal disclaimer has been filed to overcome the obviousness-type double patenting rejection. The rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) have been traversed and claims 11-27 are in condition for allowance. Accordingly, reconsideration and allowance of claims 11-27, as awarded, is respectfully requested.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

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